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MEMORANDUM

TO: Committee on Legal Services

FROM: Yelana Love, Office of Legislative Legal Services

DATE: November 1, 2019

SUBJECT: Rules of the State Board of Stock Inspection Commissioners, Department of Agriculture, concerning the annual transportation permit for cattle, 8 CCR 1205-3 (LLS Docket No. 190080; SOS Tracking No. 2018-00632).¹

Summary of Problem Identified and Recommendation

Section 35-53-130, C.R.S., states that both cattle and alternative livestock are eligible to receive an annual transportation permit. But Rule 2.1 of the State Board of Stock Inspection Commissioners (Board) limits annual transportation permits to cattle. **Because Rule 2.1 conflicts with the statute, we recommend that Rule 2.1 of the rules of the Board concerning fees for annual transportation permits not be extended.**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2020, unless the General Assembly acts by bill to postpone such expiration.

Analysis

The Board's Rule 2.1 conflicts with statute because the rule limits the eligibility for annual transportation permits to cattle, but the statute provides for eligibility for both cattle and alternative livestock.

Section 35-53-130, C.R.S. provides in pertinent part:

35-53-130. Annual transportation permit for cattle or alternative livestock - rules. (1) **Bovine livestock**, as defined in section 35-41-100.3 (1.4), **and alternative livestock**, as defined in section 35-41.5-102 (1), **shall be eligible to receive an annual transportation permit** that shall be valid for both interstate and intrastate movement if positive proof of ownership is established to the state board of stock inspection commissioners or a duly authorized Colorado brand inspector. Upon completion of an application form, approved by the state board of stock inspection commissioners, which shall give a thorough physical description showing all brands, no brands, tattoos, or other characteristics carried by the animal, accompanied by a copy of the brand inspection certificate and **a transportation permit fee in an amount determined by the board by rule** made payable to the board, an annual hauling transportation permit shall be issued that shall be good for one year after the date of issuance unless a change of ownership takes place, in which case the permit will become void. The new owner may make application for permit by the same full compliance as the prior owner. Any person fraudulently using a transportation permit issued under this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. (**Emphases added**)

In its rules related to annual transportation permits, the Board removed alternative livestock.² The Board amended the title of the rules from "Rules Pertaining to the Annual Transportation Permit for Cattle or Alternative Livestock" to "Rules Pertaining to the Annual Transportation Permit for Cattle." Additionally, in Rule 2.1, the Board changed the annual transportation permit fee from a fee per head of "animals" to a fee per head of "cattle":

²This was, at least in part, because 9 CFR § 81.3 prohibits the interstate movement of elk, deer, and moose except in limited circumstances.

Part 2. Fees

2.1. The annual transportation permit fee for show cattle shall be \$20.00 per head.

The statute allows both cattle and alternative livestock to receive an annual transportation permit. In addition to the other specific requirements, to receive a permit, the owner of the cattle or alternative livestock is required to pay a fee. The Board's rule limiting the specified fee to show cattle eliminates the ability of an owner of alternative livestock to comply with the statute and receive an annual transportation permit. By limiting the scope of the annual transportation permit through the permit fees, the rule conflicts with the statute that allows annual transportation permits for alternative livestock.

The Board has general rule-making authority regarding the manner of inspection and brands. Section 35-41-101 (3), C.R.S., requires the Board to "make such rules and regulations, not inconsistent with law, concerning the manner of inspection of brands and livestock as it deems proper." However, the Board's rule-making authority over inspection of brands and livestock does not allow the Board to adopt rules that conflict with other statutory provisions.³

Additionally, the Board has specific rule-making authority regarding annual transportation permits. As quoted on page 2 of this memo, section 35-53-130 (1), C.R.S., requires the Board to set a fee for annual transportation permits by rule. The statute granting this rule-making authority does not allow the Board to determine who may apply for an annual transportation permit by failing to set fees for animals that are otherwise eligible under statute.

Because Rule 2.1 effectively prohibits an owner of alternative livestock from obtaining an annual transportation permit, the rule conflicts with the statute.

Recommendation

We therefore recommend that Rule 2.1 of the rules of the Board concerning fees for annual transportation permits not be extended because Rule 2.1 conflicts with the statute.

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³ See § 24-4-103 (8)(a), C.R.S.: "Any rule or amendment to an existing rule issued by any agency ... which conflicts with a statute shall be void."